Filed 4/27/16 In re J.D. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.D. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. R.D., Defendant and Appellant.	E064705 (Super.Ct.No. JUVIJ11289) OPINION

APPEAL from the Superior Court of Riverside County. Susanne S. Cho, Judge. Affirmed.

Katherine A. Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman, and Larisa A. Reithmeier-McKenna, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court declared J.D. and R.D., Jr., to be dependents of the court and found that clear and convincing evidence supported their removal from the custody of defendant and appellant R.D., Sr. (father). On appeal, father challenges the sufficiency of the evidence supporting the disposition order removing the children from his custody. He contends that plaintiff and respondent Riverside County Department of Public Social Services (the Department) failed (1) to prove there was a continuing substantial danger to the children if left in father's care, and (2) to make "reasonable efforts" to prevent the children's removal. We affirm.

I. PROCEDURAL BACKGROUND AND FACTS

On August 5, 2015, the children came to the attention of the Department after it received a referral from the Riverside County Child Abuse Hotline alleging physical abuse of J.D., father's six-year-old daughter, specifically that he threw a piggy bank, which hit her in the head. The children lived with father, the paternal grandmother (grandmother) and the paternal uncle (uncle). Mother's whereabouts were unknown.

The social worker met with and interviewed father, who in 2014 was awarded sole physical custody of his children due to mother's domestic violence and substance abuse. Father denied throwing the piggy bank or hitting J.D. He claimed that he had picked up the piggy bank, and when he set it down, it hit the coffee table and broke. Father stated that he typically drinks two to three beers on his way home from work and he works five to six days per week. On August 5, 2015, father drank three 24-ounce beers. The social worker noted that Father laughed at inappropriate times and made jokes during the interview.

The social worker interviewed J.D., who stated that on the day she was hurt, her father and grandmother were arguing, and father pushed the grandmother into the stove. J.D. claimed that father picked up a piggy bank and threw it at her, hitting her in the head, causing a bump. The social worker could "easily" feel the bump, but it could not be seen due to J.D.'s hair. J.D. called 911 because her father "was all drunk." J.D. reported that father "becomes 'angry' often and he comes home after work 'drunk.'" She described "drunk" as meaning that her father is "'angry.'" She stated that when father becomes angry, he pulls hair, throws things, and "[h]e hits too 'all the time.'" J.D. did not feel safe with father; she and her brother were scared of father. J.D.'s four-year-old brother, R.D., Jr., confirmed everything J.D. had said.

The social worker interviewed the uncle, who stated that he was the primary caregiver for the children. He opined that father had a drinking problem and his job was seasonal, so the family was unaware if he was working consistently. The uncle reported that father drank "two to three 24 ounce or 32 ounce beers per day." When the uncle came home on August 5, 2015, J.D. was crying, stating that father had hit her on the head with a ceramic piggy bank. The uncle was concerned about the children and their safety, opining that father needed help with his alcohol abuse.

The grandmother also talked to the social worker. Grandmother stated that on August 5, 2015, father came home and became upset about the toys in the house. She confirmed that he picked up the piggy bank and threw it, but she claimed that it hit the floor, not J.D. The grandmother was "unsure why [J.D.] is lying." She opined that J.D. was upset that father had broken the piggy bank. Regarding J.D.'s injury, the

grandmother stated that the children play a lot and J.D. complained that her head was hurting while they were at the park three days prior. The grandmother denied that father had pushed her or that they were arguing. She further denied that father had an alcohol or substance abuse problem. Riverside County Sheriff's Deputy Dimaggio informed the Department that the information the grandmother had provided the Department was inconsistent with her initial report to law enforcement. The grandmother had told law enforcement she did not witness the incident because she was in a different room than father and J.D.

Physician's Assistant Dan Hicks reported that J.D. had received a recent injury to her head that resulted in swelling. Hicks opined that the injury could not have taken place three days prior to August 5, 2015.

Father was arrested and charged with assault with a deadly weapon (Pen. Code, § 245) and willful harm to a child (Pen. Code, § 273, subd. (a)). Law enforcement reported that father was under the influence of alcohol at the time of their investigation.

On August 6, 2015, the social worker arrived at the family residence and observed that it was "infested with roaches, as hundreds of bugs were seen crawling on the floor, kitchen counters, stove and throughout the house." The Department detained the children, placing them in protective custody. That same day, the Department filed a Welfare and Institutions Code[1] section 300 petition alleging serious physical harm as to J.D. only (§ 300, subd. (a)), failure to protect (§ 300, subd. (b)), no provision for support

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

(§ 300, subd. (g)), and abuse of a sibling as to R.D., Jr., only (§ 300, subd. (j)). The petition was amended on August 10, 2015.

At the August 12, 2015, detention hearing, the juvenile court found a prima facie basis for detaining the children.

The jurisdiction/disposition report was filed on August 27, 2015. The Department recommended that the allegations in the petition be found to be true, with the exception of allegation g-2; father had been released from custody. The Department reported that it had provided father with referrals for parenting, anger management, and substance abuse services; however, he was only willing to attend Alcoholic Anonymous meetings. Father claimed that he was not in need of parenting classes because he "hardly sees" his children, relies on the grandmother or uncle to meet their needs, and after working six days a week, he "'wants to relax' when he comes home." He also did not believe that he needed to address his anger issues, stating that the children have nothing to fear. The social worker expressed that father "allowed the children to remain in an environment where the home is infested with roaches, and neglected to seek medical treatment for the children's reoccurring lice and [J.D.'s] reoccurring urinary tract infections."[2] A contested jurisdiction hearing was set for September 16, 2015, but continued to October 20, 2015.

In an addendum report filed on September 16, 2015, the Department reported that R.D., Jr., needed a follow up appointment with an orthopedic surgeon regarding a prior

[2] Father denied needing "assistance with fumigation of their home."

arm injury. The injury was infected at the incision area of his previous surgery, and the infection had reached the bone. R.D., Jr., was hospitalized, and a "picc line" was inserted into his right arm to administer antibiotics over the next six weeks. On September 11, 2015, father enrolled in a substance abuse program and he had been having weekly supervised visitation with his children. However, his efforts in participating in his case plan were described as "minimal."

According to a further addendum report filed on October 14, 2015, R.D., Jr., was hospitalized again on September 19, 2015, due to an adverse effect to his prescription medication. Father declined to visit his son in the hospital. The Department had located mother, who admitted to a history of substance abuse. She claimed that father had a severe alcohol issue and that the uncle was a "'tweeker' who was always high." On October 6, 2015, father's substance abuse counselor recommended a more intensive program because father minimized his alcohol use, which prevented him from receiving the recommended treatment. Father complied with the recommended change to a more advanced treatment group. On October 13, 2015, father contacted the Department and reported that he would be attempting to enroll in anger management and parenting classes. The social worker met with the children, who both wanted to live with their father, mother and each other. R.D., Jr., was doing well in his medically fragile placement.[3] J.D. also reported that she was healthy, no longer suffering from recurring urinary tract infections or lice. Father continued to reside with the grandmother and

[3] On September 18, 2015, R.D., Jr., had been determined to qualify for medically fragile status.

uncle, who "continue[d] in the criminal exemption process, for consideration of relative placement" of the children.

On October 20, 2015, at the contested jurisdiction/disposition hearing, the Department requested that the children be removed from father's custody and that father be provided with reunification services. R.D., Jr., remained medically fragile with a compromised immune system. Father wanted J.D. to testify, because he believed that she would "tell the truth" to the court, namely, that he did not throw a piggy bank and hit her in the head. Thereafter, J.D. testified consistently with her prior statements, stating that father threw the piggy bank at her, hitting her in the head. She further testified that her grandmother was present and saw the piggy bank hit her head. J.D. agreed that she wanted to live with father someday, but would prefer to go home with her "tia."

The trial court found, by preponderance of the evidence, that the allegations in the petition were true, with the exception that father was no longer incarcerated, and adjudged the children to be dependents of the court. The court found that reasonable efforts had been made to prevent or eliminate the need for removal of the children from the parents (§ 361, subd. (c)(1)), ordered the children removed from father's custody, and directed the Department to provide reunification services for father.

II. DISCUSSION

Father challenges the disposition order removing his children from his custody.

A child may not be removed from a parent or guardian unless there is clear and convincing evidence of "substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there

are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1); see *In re T.V.* (2013) 217 Cal.App.4th 126, 135 (*T.V.*).) A juvenile court's removal order is reviewed under the substantial evidence standard of review, notwithstanding the evidentiary standard used at trial. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193; see *In re E.B.* (2010) 184 Cal.App.4th 568, 578 ["The clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. [Citation.] The substantial evidence rule applies no matter what the standard of proof at trial."].)

"In reviewing the sufficiency of the evidence on appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court's findings. Evidence is '"[s]ubstantial"' if it is reasonable, credible and of solid value. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order." (*T.V.*, *supra*, 217 Cal.App.4th at p. 133.)

California Rules of Court, rule 5.690(a)(1)(B)(i), requires the Department to include in its report to the court a "discussion of the reasonable efforts made to prevent or eliminate removal." (See *In re Ashly F.* (2014) 225 Cal.App.4th 803, 809.) Section 361, subdivision (d) requires the juvenile court to "'make a determination as to whether

reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home . . . . The court shall state the facts on which the decision to remove the minor is based.'" (See *Ashly F.*, *supra*, at p. 810.) California Rules of Court, rule 5.695(e), also requires the juvenile court to make findings as to whether reasonable efforts were made.

"The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) "In this regard, the court may consider the parent's past conduct as well as present circumstances." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917; see *T.V.*, *supra*, 217 Cal.App.4th at p. 133 ["A parent's past conduct is a good predictor of future behavior"].)

Here, substantial evidence supports the juvenile court's finding that removal of the children from father's custody was the only reasonable means to protect them from harm. Father's substance abuse problem caused him to be aggressive to the point that he injured his daughter. The children both described an ongoing detrimental home environment where father regularly came home from work drunk and angry, pulled hair, threw things, and hit others in the household, including the children. The children were afraid of father. The uncle also expressed concern over father's drinking problem because he would become aggressive when he drank. When the Department referred father to anger management, parenting and substance abuse services, father denied needing them. While he eventually agreed to participate in those services, his progress was described as

"minimal." A home free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. (§ 300.2.) Father was not providing that.

Moreover, father had "allowed the children to remain in an environment where the home [was] infested with roaches, and [he had] neglected to seek medical treatment for the children's reoccurring lice and [J.D.'s] reoccurring urinary tract infections." R.D., Jr., was a medically fragile child with a compromised immune system. Also, father continued to reside with the grandmother and uncle, whose criminal backgrounds had yet to be exempted in order to be considered for placement of the children.

Notwithstanding the above, father claims the removal order was not necessary because the Department failed to research reasonable alternatives and the court did not consider less drastic alternatives. (See, e.g., *In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60 [reversed order removing child from home based on mother's inability to keep the home clean when a reasonable alternative existed, such as requiring the removal of all animals from the home or the use of a homemaker service]; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 171–172 [reversed dispositional order when court failed to consider less drastic measures and no evidence that violent confrontations between the parents actually endangered the children], superseded by statute on another issue.) We disagree. Father was provided with all resources necessary to address the issues that led to removal. The Department monitored father's progress and augmented services to meet his needs. However, father's actions impeded the possibility of a plan that could ensure the children's safety in his care and custody. Father had not progressed sufficiently in his

services; he continued to live with the grandmother and uncle, both of whom had not received criminal background exemptions; and he had denied needing "assistance with fumigation of their home." Given the children's prior health issues, specifically R.D., Jr.'s medically fragile classification, the Department made reasonable efforts to avoid removing the children from father's care.

In short, substantial evidence supports the juvenile court's findings and order removing the children from father's home.

III. DISPOSITION

The juvenile court's disposition order is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

MCKINSTER
J.